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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,823	12/03/2003	Brian J. Brozell	18039 USA	7485

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EXAMINER	
SMALLEY, JAMES N	

ART UNIT	PAPER NUMBER
3781	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/727,823	BROZELL ET AL.	
	Examiner	Art Unit	
	JAMES N. SMALLEY	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 February 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *26,29-35,40-42,48,51 and 53-58* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *26,29-35,40-42,48,51 and 53* is/are allowed.

6)☒ Claim(s) *54,55 and 57* is/are rejected.

7)☒ Claim(s) *56 and 58* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 54-55 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of and in view of Swartzbaugh et al. US 4,399,920 and in view of Smith US 3,608,763.

Shah '858, in the embodiment of figures 7-8, teaches a container neck with a finish including a thread and a locking lug, and a closure having a thread, a locking lug, and an annular resilient spring element (10). The locking lug has a horizontal portion inbetween stop (20) and lug (15). Furthermore, the locking lug (14, 15, 20) is disposed on a step (13) which is radially outward of the neck finish on which the threads are disposed.

The reference as applied teaches all limitations substantially as claimed, but does not teach the closure lugs being disposed on a surface which is stepped to extend radially outwardly, joined to the upper skirt by inner and outer shoulders.

Smith '763 teaches a closure having a stepped profile wherein an inner and outer diameter of the lower, second portion are greater than the inner and outer diameter of the first, upper portion, and on which second portion is disposed a lug (62) for engaging a groove on a stepped surface (24) of a container closure neck.

It would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the container neck of Shah '858, forming the container neck lugs on a radially-outwardly stepped surface, such as that taught by Smith '763, and forming the lower portion of the closure with inner and outer diameters greater than the inner and outer diameters of the upper portion of the closure, motivated by the benefit of locating the lugs at the proper radial distance to

interlock with the closure lugs. Moreover, such comprises a mere change in shape of the prior art invention. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. The Supreme Court in *KSR* reaffirmed the familiar framework for determining obviousness as set forth in *Graham v. John Deere Co.* (383 U.S. 1, 148 USPQ 459 (1966)), but stated that the Federal Circuit had erred by applying the teaching- suggestion-motivation (TSM) test in an overly rigid and formalistic way. *KSR*, 550 U.S. at ___, 82 USPQ2d at 1391. Specifically, the Supreme Court stated that the Federal Circuit had erred in four ways: (1) "by holding that courts and patent examiners should look only to the problem the patentee was trying to solve " (*Id.* at ___, 82 USPQ2d at 1397); (2) by assuming "that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem" (Id.); (3) by concluding "that a patent claim cannot be proved obvious merely by showing that the combination of elements was obvious to try" (*Id.*); and (4) by overemphasizing "the risk of courts and patent examiners falling prey to hindsight bias" and as a result applying "[r]igid preventative rules that deny factfinders recourse to common sense" (Id.). In *KSR*, the Supreme Court particularly emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art,"*Id.* at ___, 82 USPQ2d at 1395, and discussed circumstances in which a patent might be determined to be obvious. Importantly, the Supreme Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results."*Id.* at ___, 82 USPQ2d at 1395.

Furthermore, the Supreme Court issued rationales which support the conclusion of obviousness, and which can be found in the MPEP 2141(III). Under rationale (B), it is obvious to simply substitute one known element for another, with predictable results.

Furthermore, the reference as applied teaches all limitations substantially as claimed, but fails to teach a pair of lugs, one being located just above the open end, and the other being located proximate and just below the shoulder.

Swartzbaugh '920 teaches closure lugs (36, 37) and container lugs (25) which prevent removal of the closure from the container. Examiner notes the structure functions essentially the same as that of

Shah '858 in that it prevents rotation of the cap in the removal direction. The difference between the two is that the additional lug is provided one the closure, and the stop lug (20) of Shah '858 is removed. Furthermore, Examiner notes the lugs are axially-displaced, such that lug (36) is below lug (37), and thus applying this configuration to the closure of Shan '858, replacing the lugs thereon, would likely result in the condition that one lug be located just above the opening, and the other be located just below the shoulder step.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Swartzbaugh '920, providing two separate lugs on the closure in place of one, and removing the stop portion (20) of Shah '858 in order to accommodate the function of preventing rotation of the closure in the removal direction, motivated by the benefit of reducing the amount of material used.

Regarding claim 55, Shah '858 teaches spring element (10).

Regarding claim 57, lug (37) of Swartzbaugh '920 is axially sloped.

Allowable Subject Matter

3. Claims 26, 29-35, 40-42, 48, 51 and 53 are allowed.

4. Claims 56 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed February 11, 2010 have been fully considered but they are not persuasive.

a) Applicant argues the combination of Shan, Smith and Akers (and Swartzbaugh) fail to teach the stepped profile.

Examiner asserts that the combination does, in fact, teach the claimed feature. Smith is only used to teach the stepped inner and outer surfaces. Shah essentially teaches this, on the inner surface, but not on the outer surface, hence modification in view of Smith. Swartzbaugh teaches axially displaced lugs, and thus the claimed configuration would have been obvious to one of ordinary skill in the art.

b) Applicant argues the Action has put forth an Improper Combination.

Examiner asserts one of ordinary skill in the art would find it obvious to combine the references, because they are all in the same field of endeavor, namely sealing containers with closure caps. Thus, one of ordinary skill would find it obvious to substitute similar components from one reference to another, as long as there was a reasonable expectation of success.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James N Smalley/
Examiner, Art Unit 3781

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782